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APPLICATION NO	. F	ILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,406	406 01/22/2004		Mark Unzicker	2-5169-056	4905
803	7590	01/07/2005		EXAMINER	
STURM &		•	NOVOSAD, CH	NOVOSAD, CHRISTOPHER J	
SUITE 1213				ART UNIT	PAPER NUMBER
DES MOIN	NES, IA 5	50309-4076	3671		
				DATE MAILED: 01/07/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

		- 					
		Application No.	Applicant(s)				
Office Action Summary		10/762,406	UNZICKER ET AL.				
		Examiner	Art Unit				
		Christopher J. Novosad	3671				
Period fe	 The MAILING DATE of this communication ap or Reply 	pears on the cover sheet with the	correspondence address				
THE - Exte after - If the - If NO - Failt Any	MAILING DATE OF THIS COMMUNICATION. Insions of time may be available under the provisions of 37 CFR 1. SIX (6) MONTHS from the mailing date of this communication. Depend for reply specified above, the maximum statutory period une to reply within the set or extended period for reply will, by statut reply received by the Office later than three months after the mailing departed term adjustment. See 37 CFR 1.704(b).	136(a). In no event, however, may a reply be ti ly within the statutory minimum of thirty (30) da will apply and will expire SIX (6) MONTHS from e, cause the application to become ABANDONE	mely filed ys will be considered timely. n the mailing date of this communication. ED (35 U.S.C. § 133).				
Status							
1)[🛛	Responsive to communication(s) filed on 08 h	November 2004.					
·		s action is non-final.	·				
3)[3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is						
	closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.						
Disposit	ion of Claims						
4)⊠	Claim(s) 5-22 is/are pending in the application	1.					
	4a) Of the above claim(s) <u>5-18</u> is/are withdrawn from consideration.						
5)	Claim(s) is/are allowed.						
6)⊠	Claim(s) <u>19-22</u> is/are rejected.						
7)	Claim(s) is/are objected to.						
	Claim(s) are subject to restriction and/or election requirement.						
Applicat	ion Papers						
9)[The specification is objected to by the Examine	er.					
10)	The drawing(s) filed on is/are: a) acc	cepted or b) objected to by the	Examiner.				
	Applicant may not request that any objection to the	drawing(s) be held in abeyance. Se	e 37 CFR 1.85(a).				
	Replacement drawing sheet(s) including the correct	ction is required if the drawing(s) is ob	ojected to. See 37 CFR 1.121(d).				
11)	The oath or declaration is objected to by the E	xaminer. Note the attached Office	Action or form PTO-152.				
Priority (under 35 U.S.C. § 119						
	Acknowledgment is made of a claim for foreign All b) Some * c) None of: 1. Certified copies of the priority document 2. Certified copies of the priority document	ts have been received.					
	3. Copies of the certified copies of the price	ority documents have been receive	ed in this National Stage				
	application from the International Burea	• • • • • • • • • • • • • • • • • • • •					
* 5	See the attached detailed Office action for a list	of the certified copies not receive	ed.				
Attachmen		.					
	e of References Cited (PTO-892) te of Draftsperson's Patent Drawing Review (PTO-948)	4) Interview Summary Paper No(s)/Mail D					
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) 5) Notice of Informal Patent Application (PTO-152)							
Pape	r No(s)/Mail Date	6) 🔲 Other:					

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DETAILED ACTION

Claims 1-4 are canceled.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 19-22 are again rejected under 35 U.S.C. 102(b) as being anticipated by German Patent No. 19858151 (German '151).

With respect to claim 19, German '151 discloses an excavating apparatus (10) having a prime mover (12a) with a longitudinal centerline (not shown) and comprising a main frame (12 – the structure supporting the operator's cab, engine and counterweight in Fig. 1) with an engine (12a), a ground drive system (12b) and an excavation boom (14, 18) operatively attached at a pivot axis (unnumbered – the horizontal pivot axis at the lower end of boom member 14a immediately adjacent to the operator's cab and next to the engine 12a shown in Figs. 1 and 2) thereto, said excavation boom (14, 18) comprising a first end (unnumbered – the lower end of boom member 14a adjacent the engine 12a shown in Fig. 1) and a second end (unnumbered – near 18c in Fig. 1), said first end being operatively pivotally attached to said main frame (12) at the pivot axis (mentioned above), said pivot axis being transverse to the longitudinal centerline of said prime mover (12a), said pivot axis (unnumbered – mentioned above) being fixed with respect to the engine (12a), a head shaft (near18c) operatively attached to the second end (unnumbered – near 18c) of said boom (14, 18) along a head shaft axis (shaft axis for gear 18c),

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said head shaft axis being transverse to the longitudinal centerline of the prime mover (12a); and wherein said boom (14, 18) further includes a tilt axis (AK – see the tilt of the excavator section 18 (Fig. 3) relative to the boom element 14c about the axis AK, shown in Figs. 1 and 3) allowing head shaft (shaft for gear 18c) to pivot along the tilt axis (AK) which is fixed substantially perpendicular with respect to said pivot axis (unnumbered – mentioned above).

It is to be noted by applicant that the Examiner's application of the reference to claim 19, as noted above, differs from that in the previous Office action. The rejection now relies on **both the elements 14 and 18** (Fig. 1) as meeting the broadly recited "excavation boom" whereas in the previous Office action the Examiner relied **only on element 18** of the reference to meet the recited "excavation boom."

With respect to claims 20-22, German '151 discloses an excavating apparatus (10) having a prime mover (12a) with a longitudinal centerline (not shown) and comprising a main frame (12 – the structure supporting the operator's cab, engine and counterweight in Fig. 1) with an engine (12a), a ground drive system (12b) and an excavation boom (14, 18) operatively attached at a pivot axis (unnumbered – the horizontal pivot axis at the lower end of boom member 14a immediately adjacent to the operator's cab and next to the engine 12a shown in Figs. 1 and 2) thereto, said excavation boom (14, 18) comprising a first end (unnumbered – the lower end of boom member 14a adjacent the engine 12a shown in Fig. 1) and a second end (unnumbered – near 18c in Fig. 1), said first end being operatively pivotally attached to said main frame (12) at the pivot axis (mentioned above), said pivot axis being transverse to the longitudinal centerline

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of said prime mover (12a), said pivot axis (unnumbered – mentioned above) being fixed with respect to the engine (12a), a head shaft (shaft for gear 18c) operatively attached to the second end (unnumbered – near 18c) of said boom (14, 18) along a head shaft axis (shaft axis for gear 18c), said head shaft axis being transverse to the longitudinal centerline of the prime mover (12a); and wherein said head shaft (shaft for gear 18c) is also operatively pivotally attached to said excavation boom along a tilt axis (AK – see the tilt of the excavator section 18, Fig. 3, relative to the boom element 14c about the tilt axis AK, shown in Figs. 1 and 3); wherein the tilt axis (AK) is fixed substantially perpendicular to said pivot axis (unnumbered – mentioned above), and wherein the tilt axis (AK) is fixed substantially parallel to a line substantially perpendicular to said pivot axis.

Again, it is to be noted by applicant that the Examiner's application of the reference to claims 20-22, as noted above, differs from that in the previous Office action. The rejection now relies on **both the elements 14 and 18** (these elements including 14a, 14b, 14c, 16 and 18, Fig. 1) as meeting the broadly recited "excavation boom" whereas in the previous Office action the Examiner relied **only on element 18** of German Patent '151 to meet the recited "excavation boom."

Response to Applicant's Arguments

Applicants' traversal of the rejection based on the argument that "said pivot axis" 44 of the structure of German Patent '151 is not "fixed with respect to the engine," as recited in independent claims 19 and 20, is inaccurate because the numeral "44" does not appear in the

reference patent, and therefore, could not have been relied on in the rejection to denote the "pivot axis." Rather, contrary to applicants' argument, the German Patent '151, as now relied upon, discloses a "pivot axis" (unnumbered, and which corresponds to the horizontal pivot axis at the lower end of boom member 14a immediately adjacent to the operator's cab and next to the engine 12a, Figs. 1 and 2) which is clearly shown to be "fixed with respect to the engine" (12a), as called for in these claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher J. Novosad whose telephone number is 703-308-2246. The examiner can normally be reached on Monday-Thursday 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached at 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher J. Novosad

Primary Examiner
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